

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

CLAUDIA RASMUSSEN,
Plaintiff,

Case No.:

vs.
CAPITAL ONE BANK (USA), N.A.,
Defendant

COMPLAINT AND JURY DEMAND

COMPLAINT

Plaintiff, CLAUDIA RASMUSSEN (“Plaintiff”), by and through her undersigned counsel, hereby sues Defendant, CAPITAL ONE BANK (USA), N.A. (“Defendant”), alleging as follows:

I. INTRODUCTION

1. Plaintiff brings this action on behalf of herself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

2. The TCPA was legislated to prevent companies like CAPITAL ONE BANK (USA), N.A. from invading Americans' privacy by stopping abusive "robo-calls." The legislative history "described these calls as 'the scourge of modern civilization,'

1 they wake us up in the morning; they interrupt our dinner at night; they force the
2 sick and elderly out of bed; they hound us until we want to rip the telephone out of
3 the wall.' 137 Cong. Rec. 30, 821 (1991). Senator Hollings presumably intended to
4 give telephone subscribers another option: telling the autodialers to simply stop
5 calling." Osorio v. State Farm Bank, F.S.B., 746 F.3d 1242, 1255-56 (11th Cir.
6
7 2014).

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10 **II. JURISDICTION AND VENUE**

11 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28
12 U.S.C. § 1367, and 47 U.S.C. § 227.

13 4. Venue is proper pursuant to 28 U.S.C. 1391(b)(1) as the conduct giving rise
14 to this action occurred in this district, as Defendant resides in this district and
15 Defendant transacts business in this district.

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17 **III. PARTIES**

18 5. Plaintiff is a natural person residing in Jackson and Swain Counties, in the
19 city of Whittier, North Carolina and is otherwise *sui juris*.

20 6. Defendant is a nationally chartered bank with its principal place of business
21 located in McLean, Virginia.

22 7. Defendant is a "person" as defined by 47 U.S.C. §153(39).

23 8. At all times relevant to this Complaint, Defendant has acted through its
24 agents, employees, officers, members, directors, heir, successors, assigns,
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1 principals, trustees, sureties, subrogees, representatives and insurers.
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IV. FACTUAL ALLEGATIONS

4 9. Defendant placed collection calls to Plaintiff seeking and attempting to
5 collect on alleged debts incurred through purchases made on credit issued by
6 Defendant.
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8 10. Plaintiff is the “called party.” See Breslow v. Wells Fargo Bank, N.A., 755
9 F.3d 1265 (11th Cir. 2014).
10

11 11. Defendant placed collection calls to Plaintiff’s cellular telephone at phone
12 number (805) XXX-6863.
13

14 12. Defendant placed collection calls to Plaintiff from various telephone
15 numbers including, but not limited to, (800) 955-6600.
16

17 13. Upon information and belief, based on the number, frequency and timing of
18 the calls, and on Defendant’s prior business practices, Defendant’s calls were placed
19 with an automatic telephone dialing system or an artificial or prerecorded voice.
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21 14. Defendant used an “automatic telephone dialing system,” as defined by 47
22 U.S.C. § 227(a)(1), or an artificial or prerecorded voice to place telephone calls to
23 Plaintiff seeking to collect a consumer debt allegedly owed by Plaintiff.
24

25 15. Defendant’s calls were not for emergency purposes, which would be
26 excepted by 47 U.S.C. § 227(b)(1)(A).
27
28

16. Defendant's calls were placed to a telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §227(b)(1).

17. Defendant never received Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

18. On or about February 26, 2019, Plaintiff spoke with a representative of Defendant's company at phone number (800) 955-6600, and told Defendant to stop calling her cellular telephone.

19. During the February 26, 2019 conversation, Plaintiff gave Defendant her full social security number and birthdate, in order to assist Defendant in identifying her and accessing her accounts before asking Defendant to stop calling her cellular telephone.

20. Plaintiff revoked any consent, explicit, implied, or otherwise, to call her cellular telephone and/or to receive Defendant's calls using an automatic telephone dialing system or an artificial or prerecorded voice in her conversation with Defendant's representative on February 26, 2019.

21. Despite Plaintiff's request to cease, Defendant continued to place calls to Plaintiff's cellular phone after February 26, 2019.

22. Despite Plaintiff's request that Defendant cease placing automated collection calls to Plaintiff via the use of an automatic telephone dialing system or an artificial or prerecorded voice, Defendant continued to place at least forty (40) telephone calls via the use of an automatic telephone dialing system or an artificial or prerecorded voice to Plaintiff's cellular telephone.

23. Defendant placed the great number of telephone calls to Plaintiff with the sole intention of harassing Plaintiff in such a manner so as to cause Plaintiff to pay the alleged debt claimed by Defendant, even when Plaintiff admittedly had impaired ability to pay. This telephonic harassment caused Plaintiff considerable anxiety and emotional distress.

FIRST CAUSE OF ACTION
**NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT - 47 U.S.C. §227(b)(3)(B)**

24. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

25. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 *et seq.*

26. As a result of Defendant's negligent violations of 47 U.S.C. §227 et seq., Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

27. Plaintiff is also entitled to injunctive relief prohibiting such conduct in the future.

WHEREFORE, Plaintiff, CLAUDIA RASMUSSEN, respectfully requests judgment be entered against Defendant, CAPITAL ONE BANK (USA), N.A., as follows:

a. Awarding Plaintiff statutory damages of five hundred dollars (\$500.00) multiplied by the number of negligent violations of the TCPA alleged herein, to wit: least forty (40) for a total of twenty thousand dollars (\$20,000.00);

b. Awarding Plaintiff actual damages and compensatory damages according to proof at time of trial;

c. Granting Plaintiff such other and further relief as may be just and proper.

SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE
CONSUMER PROTECTION ACT
47 U.S.C. § 227(b)(3)(C)

28. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

29. The above listed acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 *et seq.*

1 30. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
2 227 *et seq.*, Plaintiff is entitled an award of one thousand five hundred dollars
3 (\$1,500.00) in statutory damages for each and every violation, pursuant to 47 U.S.C.
4 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
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7 31. Plaintiff is also entitled to injunctive relief prohibiting such conduct in the
8 future.
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10

11 WHEREFORE, Plaintiff, CLAUDIA RASMUSSEN, respectfully requests
12 judgment be entered against Defendant, CAPITAL ONE BANK (USA), N.A., as
13 follows:
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16 a. Awarding Plaintiff statutory damages statutory damages of one
17 thousand five hundred dollars (\$1,500.00) multiplied by the number of knowing
18 and/or willful violations of TCPA alleged herein, to wit: forty (40) for a total of
19 sixty thousand dollars (\$60,000.00);
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22 b. Awarding Plaintiff actual damages and compensatory damages
23 according to proof at time of trial;
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26 c. Granting Plaintiff such other and further relief as may be just and
27 proper.
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JURY TRIAL DEMAND

26 Plaintiff demands a jury trial on all issues so triable.
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Respectfully submitted,

Dated: August 15, 2019

/s/ Frank A. Webb
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